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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
FREDDIE LEE WILLIAMSON,  
  
Defendant and Appellant.

C058878  
  
(Super. Ct. No.  
06F09954)

Defendant Freddie Lee Williamson appeals from a judgment entered after his motion to suppress evidence was denied. Defendant was convicted by jury of possession of methamphetamine for sale (Health & Saf. Code, § 11378) and transportation of methamphetamine (Health & Saf. Code, § 11379, subd. (a)). Following a bifurcated hearing, the jury also found defendant to have four prior serious felony convictions within the meaning of the "Three Strikes" law. The trial court sentenced defendant to a state prison term of 25 years to life, imposed two restitution fines of \$5,000 (Pen. Code, §§ 1202.4, subd. (b), 1202.45), with

the latter fine suspended unless defendant's parole is revoked, imposed a \$50 laboratory fee (Health & Saf. Code, § 11372.5, subd. (a)), "plus \$100 penalty and assessments as prescribed by law," imposed a \$150 drug program fee (Health & Saf. Code, § 11372.7, subd. (a)), "plus \$300 penalties and assessment as prescribed by law," imposed a \$20 court security fee (Pen. Code, § 1465.8, subd. (a)(1)), imposed a \$213.37 main jail booking fee and a \$23.50 main jail classification fee (Gov. Code, § 29550.2), and awarded defendant a total of 789 days of presentence custody credit.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief.

Defendant filed a supplemental brief contending (1) he received ineffective assistance of counsel, and (2) his Fourth Amendment right against unreasonable searches and seizures was violated when he was stopped by police for a violation of the traffic laws and then searched once police discovered that he was on parole. Neither contention has merit. However, because the trial court failed to provide a "detailed recitation of all the fees, fines and penalties on the record," we remand so the trial court may do so. (*People v. High* (2004) 119 Cal.App.4th 1192, 1200 (*High*).)

## FACTUAL BACKGROUND

On a November night in 2006, Officers Joseph Aguilar and Dave Gutierrez of the Citrus Heights Police Department pulled over a green Cadillac with a license plate lamp that did not illuminate the license plate. The Cadillac contained two occupants. Defendant was the driver; a man named Jermyn Sanders was the passenger. When the Cadillac pulled over, Officer Aguilar noticed Sanders "lean forward towards the floorboard seat area." Officer Aguilar approached the driver's side window, explained the reason for the stop and asked for defendant's driver's license; Officer Gutierrez made contact with Sanders. Officer Gutierrez asked Sanders to get out of the car and mentioned to Officer Aguilar that Sanders was on parole. Officer Aguilar then asked defendant if he was on probation, to which, defendant responded, that he was also on parole. Officer Aguilar then asked defendant to step out of the car and conducted a parole search. A knotted baggie containing 26.4 grams of methamphetamine was found in defendant's left jacket pocket.

Detective Michael Lee of the Citrus Heights Police Department testified that, in his expert opinion, the amount of methamphetamine found on defendant, and the corresponding price of such a quantity, indicated that the narcotic was possessed for purposes of sale.

Jermyn Sanders testified for the defense. He explained that he and defendant had worked together the day of the arrest, that there were several generic jackets that were worn by

employees, and that he had borrowed one of those jackets earlier in the day. Later in the afternoon, when Sanders took his lunch break and borrowed defendant's Cadillac to cash his paycheck, Sanders ran into a man who asked him to "hold something" for him. Sanders knew the man to be "notorious for smoking pot" and believed the "something" to be marijuana. Sanders told the man to: "Just put it in the car. It's open." Sanders then clarified that the man should put the substance either in the glove compartment or the jacket that he had left in the car, but to make sure to come back to get it. The man agreed. When Sanders emerged from the check cashing establishment 45 minutes later, he assumed that the man had already retrieved the "something" from the car, and drove back to work. Sanders left the jacket in the Cadillac. After work, Sanders and defendant left together in defendant's Cadillac; defendant was wearing the jacket, but it did not occur to Sanders that the "something" surreptitiously stowed in the jacket would still be there. They were pulled over by law enforcement shortly thereafter.

#### DISCUSSION

##### I

Defendant claims that he received ineffective assistance of counsel because his attorney (1) only visited him three times in 18 months, two of those visits concerning payment and not the case itself, (2) did not communicate with defendant concerning the defense strategy, (3) did not investigate the case, and (4) refused to file a motion to obtain the police dispatch recording

and audio and video recording taken from the police vehicle during the stop.

In asserting ineffective assistance of counsel, the burden is on defendant to establish both that counsel's representation fell below prevailing professional norms and that, in the absence of counsel's failings, a more favorable result was reasonably probable. (Cf. *People v. Ledesma* (1987) 43 Cal.3d 171, 215-218; *Strickland v. Washington* (1984) 466 U.S. 668, 694 [80 L.Ed.2d 674, 698].) On review, we are required to exercise deferential scrutiny, i.e., we may not second-guess counsel's reasonable tactical decisions. (*People v. Ledesma, supra*, 43 Cal.3d at p. 216.) We examine the record to determine if there is any explanation for the challenged aspects of representation. If the record sheds no light on why counsel failed to act in the manner challenged, the case is affirmed "unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation . . . ." (*People v. Pope* (1979) 23 Cal.3d 412, 426, overruled on other grounds in *People v. Berryman* (1993) 6 Cal.4th 1048, 1081, fn. 10, overruled on other grounds in *People v. Hill* (1998) 17 Cal.4th 800, 823, fn. 1.)

Defendant's claims fail because they are based largely on facts outside the appellate record. (*People v. Lucero* (2000) 23 Cal.4th 692, 728-729.) The record does not indicate what discussions took place between counsel and defendant. Nor does it indicate what issues may have been taken into consideration in reaching the decision not to seek the dispatch recording and

patrol car video recording from the stop. Nor does the record reflect that counsel was given an opportunity to explain the reasons for the challenged conduct. As defendant's assertion of ineffective assistance of counsel is based on facts outside the appellate record, it is not cognizable on appeal. (See *People v. Pope, supra*, 23 Cal.3d at p. 426.)

Defendant further asserts that counsel was ineffective because he did not make any objections during trial or argue any motions. This assertion is simply belied by the record. Defendant's attorney made and argued a motion to dismiss, brought a motion to suppress evidence, actively cross-examined the People's witness, and also brought and argued a motion to dismiss defendant's prior convictions. Moreover, defendant's attorney was incredibly active at trial, actively cross-examining the People's witnesses, thoroughly examining Jermyn Sanders on behalf of the defense, and delivering a detailed and eloquent closing argument to the jury.

On this record, we cannot find defendant was ineffectively represented by counsel.

## II

Defendant also contends that his motion to suppress was wrongly denied. We disagree.

### A

"The standards for appellate review of the trial court's determination on a motion to suppress pursuant to [Penal Code] section 1538.5 are well settled. The trial court's factual determinations are reviewed under the deferential substantial

evidence standard; its determination of the applicable rule of law is scrutinized under the standard of independent review.

[Citation.] We independently assess as a question of law whether, under such facts as found by the trial court, the challenged action by the police was constitutional.

[Citation.]' [Citation.]" (*People v. Lindsey* (2007) 148 Cal.App.4th 1390, 1395 (*Lindsey*).)

"Ordinary traffic stops are treated as investigatory detentions for which the officer must be able to articulate specific facts justifying the suspicion that a crime is being committed. [Citations.]" (*People v. Hernandez* (2008) 45 Cal.4th 295, 299; *People v. Rodriguez* (2006) 143 Cal.App.4th 1137, 1148.) A police officer who stops a motorist on a traffic violation may engage in investigative activities beyond the original purpose of the traffic stop, such as determining whether the occupant of the vehicle has any outstanding warrants or is on probation or parole, so long as these activities "'do not prolong the stop beyond the time it would otherwise take. [Citations.]"' (*People v. Gallardo* (2005) 130 Cal.App.4th 234, 238; *People v. Brown* (1998) 62 Cal.App.4th 493, 498 [finding "no unnecessary extension of the traffic detention" where officer "questioned defendant about his probation status and requested permission to search while he awaited the results of the warrant check. One minute of generalized questioning during a routine traffic stop is not unreasonable."].)

In this case, Officer Aguilar testified that he pulled over defendant's Cadillac because the license plate lamp did not

illuminate the license plate, in violation of section 24601 of the Vehicle Code. Officer Aguilar's personal observation of a Vehicle Code violation provided not only reasonable suspicion, but probable cause to temporarily detain defendant for purposes of obtaining defendant's driver's license, explaining the reason for the stop, writing a citation for the violation, and obtaining a promise to appear. As Officer Aguilar was obtaining defendant's driver's license and explaining the reason for the stop, Officer Gutierrez discovered that the passenger was on parole. This information prompted Officer Aguilar to ask defendant if he was on probation, to which defendant responded that he was also on parole. Officer Aguilar then asked defendant to step out of the car and conducted a parole search. "[A] search conducted under the auspices of a properly imposed parole search condition does not intrude on any expectation of privacy 'society is "prepared to recognize as legitimate."' [Citations.]" (*People v. Reyes* (1998) 19 Cal.4th 743, 754.)

Accordingly, we find no violation of defendant's Fourth Amendment right against unreasonable searches and seizures.

B

Defendant's arguments to the contrary are unavailing.

First, defendant asserts Officer Aguilar did not possess reasonable suspicion to stop his vehicle because defendant was "never charged with or found guilty of the traffic violation" and "there is no traffic ticket or any evidence concerning the [traffic violation] to determine the legitimacy of the stop." Of course, the issuance of a citation or conviction of a traffic



violation is not required in order for a traffic stop to be considered reasonable under the Fourth Amendment. As we have already explained, what is required is that the officer who conducted the traffic stop "must be able to articulate specific facts justifying the suspicion that a crime is being committed. [Citations.]" (*People v. Hernandez, supra*, 45 Cal.4th at p. 299; *People v. Rodriguez, supra*, 143 Cal.App.4th at p. 1148.) Here, Officer Aguilar articulated specific facts justifying the suspicion that defendant's Cadillac was in violation of the Vehicle Code.

Second, defendant asserts Officer Aguilar exceeded the scope of the traffic stop when he asked defendant if he was on probation because the officer did not ask for defendant's license, registration and proof of insurance. Therefore, according to defendant, Officer Aguilar "lacked the requisite reasonable suspicion to continue to detain defendant after completing a traffic stop[.]" This assertion is contradicted by Officer Aguilar's testimony. According to Officer Aguilar, he asked for defendant's driver's license and was explaining the reason for the stop when he discovered the passenger's parole status and subsequently asked defendant if he was on probation. Contrary to defendant's suggestion, the detention was not unduly prolonged by Officer Aguilar's question concerning defendant's probation status. The question and answer occurred during the traffic stop and could not have taken more than a minute. (See *People v. Brown, supra*, 62 Cal.App.4th at p. 498.) Moreover, once defendant admitted to being on parole, Officer Aguilar was

entitled to expand the scope of the traffic stop to conduct a parole search. (*People v. Webster* (1991) 54 Cal.3d 411, 430-431 [scope of traffic stop may be reasonably expanded in accordance with developing circumstances].)

Finally, defendant asserts that the parole search was unconstitutional, although the precise reason for the alleged constitutional infirmity is not provided. Again, we disagree.

As defendant points out, the fact that "particularized suspicion is not required in order to conduct a search based on a properly imposed search condition does not mean parolees have no protection." (*People v. Reyes, supra*, 19 Cal.4th at p. 753.) "[A] parole search could become constitutionally "unreasonable" if made too often, or at an unreasonable hour, or if unreasonably prolonged or for other reasons establishing arbitrary or oppressive conduct by the searching officer.' [Citations.]" (*Id.* at pp. 753-754.) For example, "a search is arbitrary and capricious when the motivation for the search is unrelated to rehabilitative, reformatory or legitimate law enforcement purposes, or when the search is motivated by personal animosity toward the parolee." (*Id.* at p. 754.) And an "unrestricted search of a probationer or parolee by law enforcement officers at their whim or caprice is a form of harassment." (*Ibid.*)

In this case, there is no evidence in the record that Officers Aguilar and Gutierrez engaged in the harassment or oppression of defendant. Nor is there any evidence that they searched defendant too often, at an unreasonable hour, or

unreasonably prolonged the search. The record reveals a legitimate traffic stop, during which the officers conducted a parole search for legitimate law enforcement purposes. Accordingly, we cannot find this parole search to be unreasonable under the Fourth Amendment.

### III

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant. However, because the trial court failed to provide a "detailed recitation of all the fees, fines and penalties on the record," we remand so the trial court may do so. (*People v. High, supra*, 119 Cal.App.4th at p. 1200.) As we have already indicated, the trial court imposed two restitution fines of \$5,000 (Pen. Code, §§ 1202.4, subd. (b), 1202.45), with the latter fine suspended unless defendant's parole is revoked, a \$50 laboratory fee (Health & Saf. Code, § 11372.5, subd. (a)), "plus \$100 penalty and assessments as prescribed by law," and imposed a \$150 drug program fee (Health & Saf. Code, § 11372.7, subd. (a)), "plus \$300 penalties and assessment as prescribed by law," imposed a \$20 court security fee (Pen. Code, § 1465.8, subd. (a)(1)), and imposed a \$213.37 main jail booking fee and a \$23.50 main jail classification fee (Gov. Code, § 29550.2.) This is not the detailed recitation of all fees, fines and penalties we required in *High*.

### DISPOSITION

The cause is remanded with directions to the trial court to separately list, with the statutory basis, all fines, fees and

penalties imposed. The judgment is affirmed as modified. The trial court is directed to prepare a corrected abstract of judgment to reflect the modifications ordered by this court and to forward a certified copy of the corrected abstract to the Department of Corrections.

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NICHOLSON, Acting P. J.

We concur:

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HULL, J.

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ROBIE, J.